

1. I am a Market Surveillance Specialist in the Office of Market Surveillance of the Division of Enforcement of the Securities and Exchange Commission at its Washington, D.C. headquarters. As part of my job, I provide market analysis for the SEC in investigations and civil enforcement actions against persons and entities alleged to have violated the United States securities laws. I have provided such analysis in the investigation leading up to this action. I make this Declaration in support of the SEC's *ex parte* application for a temporary restraining order freezing assets and other relief against

Defendants Caledonian Bank Ltd., Caledonian Securities Ltd. (collectively, “Caledonian”), Clear Water Securities, Inc., Legacy Global Markets S.A. and Verdmont Capital, S.A. (collectively, with Caledonian, the “Defendants”).

2. At the request of counsel for the SEC, I have calculated the amounts of proceeds that the Defendants obtained from their sales of securities in four companies – Swingplane Ventures, Inc., Goff Corp., Norstra Energy Inc. and Xumanii, Inc. The Defendants sold these securities in two ways: (a) Caledonian, Clear Water and Legacy Global deposited stock certificates into accounts in their names at clearing broker-dealer Alpine Securities Corporation in Salt Lake City, Utah and sold the securities derived from those stock certificates through accounts in their names at introducing broker-dealer Scottsdale Capital Advisors Corporation in Scottsdale, Arizona; and (b) Caledonian and Verdmont deposited stock that was ultimately converted into street name in custodial omnibus accounts, which were held primarily or wholly at the Bank of New York Mellon (“BNY Mellon”) in New York, New York. The custodial omnibus accounts had delivery and receive versus payment arrangements (“DVP/RVP”) with several broker-dealers in the United States, which maintained accounts in the names of the Defendants.

3. I understand a DVP/RVP arrangement to be an agreement whereby purchases and sales are settled on a transaction-by-transaction basis with the client’s agent/custodian, not with the executing firm. As such the DVP/RVP account statements included as exhibits record the trade executions, but typically do not show corresponding securities and/or cash balances.

I. The Defendants' Account Statements

4. I have reviewed account statements and other documents produced to the SEC pertaining to brokerage accounts in the names of the Defendants and which executed purchases and sales of securities issued by Swingplane, Goff, Norstra, or Xumanii. Some of the account statements show trade dates and others show settlement dates. I reviewed statements from the following accounts:

- A. Account No. [REDACTED] in the name of Caledonian Bank and Caledonian Securities Ltd at broker-dealer Wilson-Davis & Company, Inc. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 5 is an account statement for the account for the period from January 1, 2013 through March 31, 2013.
- B. Account No. [REDACTED] in the name of Caledonian Securities Limited, which was introduced by broker-dealer Aegis Capital Corporation to its clearing firm RBC Capital Markets LLC. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 6 consists of excerpts from account statements for this account for the period from March 2013 through July 2013.
- C. Account No. [REDACTED] in the name of Caledonian Securities Limited, which was introduced by broker-dealer Ascendant Capital Markets, LLC to its clearing firm Apex Clearing Corporation. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 7 consists of account statements for the account for the period from January 1, 2013 through February 28, 2013.
- D. Account No. [REDACTED] in the name of RBC Dexia FAO Caledonian Bank, which was introduced by broker-dealer Emerging Growth Equities, Ltd. to its clearing firm National Financial Services LLC. This account had a DVP/RVP

arrangement with BNY Mellon. Exhibit 8 consists of account statements for the account for the months of April 2013 and May 2013.

- E. Account No. [REDACTED] in the name of Caledonian Bank Limited, which was introduced by broker-dealer BMA Securities, Inc. to its clearing firm Industrial and Commercial Bank of China Financial Services, LLC. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 9 consists of account statements for the account for the period from May 2013 through August 2013.
- F. Account No. [REDACTED] in the name of Caledonian Securities, which was introduced by broker-dealer WallachBeth Capital, LLC to its clearing firm Merrill Lynch, Pierce, Fenner, & Smith (“Merrill Lynch”). This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 10 consists of account statements for the account for the months of April 2013 and May 2013.
- G. Account No. [REDACTED] in the name of Caledonian Securities Limited, which was introduced by broker-dealer Vandham Securities Corporation to its clearing firm Merrill Lynch. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 11 consists of excerpts from account statements for the account for January 2013 through August 2013.
- H. Account No. [REDACTED] in the name of EDD FAO Caledonian Bank Ltd, which was introduced by broker-dealer Sunrise Securities Corporation to its clearing firm Merrill Lynch. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 12 consists of excerpts from account statements for the account for the period from January 2013 through March 2013.

- I. Account [REDACTED] in the name of Caledonian Securities Limited, which was introduced by broker-dealer BMA Securities, Inc. to its clearing firm Lek Securities Corporation. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 13 consists of account statements for the account for the period from January 2013 through April 2013.
- J. Account [REDACTED] in the name of Caledonian Securities Limited at broker-dealer Lek Securities Corporation. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 14 is an account statement for the account for the month of July 2013.
- K. Account No. [REDACTED] in the name of Caledonian 298307, CP Caledonia Bank Ltd, which was introduced by broker-dealer The Vertical Trading Group, LLC to its clearing firm ConvergeX Execution Solutions LLC. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 15 consists of account statements for the account for the period from January 2013 through June 2013.
- L. Account No. [REDACTED] in the name of Caledonian 298307, CP Caledonia Bank Ltd, which was introduced by broker-dealer The Vertical Trading Group, LLC to its clearing firm ConvergeX Execution Solutions LLC. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 16 consists of account statements for the account for the period from June 2013 through September 2013.
- M. Account No. [REDACTED] in the name of RBC Dexia Investor Services Trust F/A/O Caledonian Securities Ltd, which was introduced by broker-dealer Maxim Group LLC to its clearing firm Pershing LLC. This account had a DVP/RVP

arrangement with BNY Mellon. Exhibit 17 consists of excerpts from account statements for the account for the period from May 13, 2013 through September 30, 2013.

- N. Account No. [REDACTED] in the name of Caledonian Bank Limited, which was introduced by broker-dealer Scottsdale Capital Advisors Corporation ("Scottsdale Capital Advisors") to its clearing firm Alpine Securities Corporation ("Alpine Securities"). Exhibit 18 is an account statement for the account for the period from October 1, 2012 through September 20, 2014.
- O. Account No. [REDACTED] in the name of Legacy Global Markets SA, which was introduced by broker-dealer Scottsdale Capital Advisors to its clearing firm Alpine Securities. Exhibit 19 consists of account statements for the account for the period from October 1, 2012 through November 28, 2014.
- P. Account No. [REDACTED] in the name of Clearwater Securities, Inc., which was introduced by broker-dealer Scottsdale Capital Advisors to its clearing firm Alpine Securities. Exhibit 20 consists of account statements for the account for the period from October 1, 2012 through July 31, 2014.
- Q. Account No. [REDACTED] in the name of Vermont Capital-RBC Dexia at broker-dealer Knight Capital Americas LLC (now KCG Americas LLC). This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 21 consists of account statements for the account for the period from January 2013 through September 2013.
- R. Account No. [REDACTED] in the name of RBC Investor Services FAO Vermont Capital, which was introduced by broker-dealer Sunrise Securities Corporation to

its clearing firm Merrill Lynch. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 22 consists of account statements for the account for the period from January 2013 through August 2013.

S. Account No. [REDACTED] in the name of Vermont Capital at UBS Securities LLC. This account had a DVP/RVP arrangement with BNY Mellon. Exhibit 23 consists of excerpts from account statements for the account for the period from January 2013 to August 2013.

II. Calculation of Net Proceeds

5. In addition to selling Swingplane, Goff, Norstra and Xumanii securities into the public markets, Caledonian Bank, Caledonian Securities, Legacy Global and Vermont also purchased such securities in the public markets. In most instances, the Defendants used the same brokerage accounts for purchases as for sales and, as such, I was not able to identify the origin of the specific securities sold in any particular sale – *i.e.*, whether such securities were deposited into the Defendants' accounts as described in paragraph 2 above, or whether such securities were purchased in the public markets. To be conservative, in these instances I did not calculate the Defendants' proceeds based on the gross number of shares sold. Instead, I subtracted the number of shares and purchase money in the Defendants' public market purchases from the number of shares sold and sale proceeds in their total sales, resulting in *net* numbers of shares sold and *net* sale proceeds. My calculations indicated that this netting-out approach was more conservative (it resulted in lower amounts of sale proceeds) than other approaches (*e.g.*, computing average prices and applying such prices to all of the shares sold). Netting was not necessary if the Defendant had no purchases. As described below, I was able to

isolate Defendant Caledonian's sale of Goff shares in the public markets from those that it did not acquire in the public markets. Further, netting was applied to all of the DVP/RVP accounts if any one of the accounts had purchases, since these accounts settled at the same custodian.

III. The Amounts of Proceeds from Sales of Swingplane Securities

6. I calculated the amounts of proceeds obtained by the Defendants from selling Swingplane securities by examining, for the period from January 16, 2013 through March 19, 2013: (a) the number of shares purchased on the public markets; (b) the amount of money paid toward the purchase of such shares; (c) the number of shares sold; and (d) the amount of money received from the sale of such shares. By subtracting the number of shares purchased from the number of shares sold, and by subtracting the amount of purchase money paid from the amount of sale proceeds, I arrived at a net number of shares and a net amount of proceeds. Netting was not necessary if the Defendant had no purchases. For these calculations, I reviewed account statements from the brokerage accounts listed above that had transactions in Swingplane securities. From my review of the account statements, I prepared the spreadsheet attached as Exhibit 1.

7. As detailed in Exhibit 1, Caledonian purchased 29,501,105 shares of Swingplane stock for \$15,974,113.46 and sold 72,201,105 shares of Swingplane stock for proceeds of \$30,823,422.73. Performing the netting calculations described in paragraph 6 above, I arrived at net proceeds of \$14,849,309.27 from Caledonian's sale of 42,700,000 shares of Swingplane stock that were not purchased in the public markets.

8. As detailed in Exhibit 1, Legacy Global sold 36,750,000 shares of Swingplane stock from its account at Scottsdale Capital Advisors for proceeds of \$9,622,722.23.

9. As detailed in Exhibit 1, Clear Water sold 43,040,000 shares of Swingplane stock from its account at Scottsdale Capital Advisors for proceeds of \$7,214,894.75.

10. In total, I calculated that Caledonian, Legacy Global and Clear Water obtained proceeds of \$31,686,926.25 from their sales of 122,490,000 shares of Swingplane stock that were not purchased in the public markets.

IV. The Amounts of Proceeds from Sales of Goff Securities

11. I calculated the amounts of proceeds obtained by the Defendants from selling Goff securities by examining, for the period from March 13, 2013 through May 6, 2013: (a) the number of shares purchased on the public markets; (b) the amount of money paid toward the purchase of such shares; (c) the number of shares sold; and (d) the amount of money received from the sale of such shares. By subtracting the number of shares purchased from the number of shares sold, and by subtracting the amount of purchase money paid from the amount of sale proceeds, I arrived at a net number of shares and a net amount of proceeds. Netting was not necessary if the Defendant had no purchases. As described below, I was able to isolate Defendant Caledonian's sale of Goff shares in the public markets from those that they did not acquire in the public markets. For these calculations, I reviewed account statements from the brokerage accounts listed above that had transactions in Goff securities. From my review of the account statements, I prepared the spreadsheet attached as Exhibit 2.

12. As detailed in Exhibit 2, Caledonian Bank sold 35,000,000 shares of Goff stock from its account at Scottsdale Capital Advisors for proceeds of \$6,860,685.04. This Goff stock did not originate from public market purchases. Conversely, Caledonian had other sales that resulted from public market purchases, which I was able to isolate and exclude since they resulted in no net sales into the public markets (i.e. public market trading activity). Caledonian purchased and sold the same number of Goff shares, 30,137,584, in its DVP/RVP accounts. These purchases and sales resulted in a net loss of approximately \$8.6 million.

13. As detailed in Exhibit 2, Legacy Global purchased through its account at Scottsdale Capital Advisors 1,900,000 shares of Goff stock for \$1,160,321.69 and sold 23,650,000 shares of Goff stock for proceeds of \$4,454,138.67. Performing the netting calculations described in paragraph 11 above, I arrived at net proceeds of \$3,293,816.98 from Legacy Global's sale of 21,750,000 shares of Goff stock that were not purchased in the public markets.

14. As detailed in Exhibit 2, Clear Water sold 25,000,000 shares of Goff stock from its account at Scottsdale Capital Advisors for proceeds of \$4,226,689.76.

15. As detailed in Exhibit 2, Vermont purchased 16,328,400 shares of Goff stock for \$2,759,319.89 and sold 30,328,400 shares of Goff stock for proceeds of \$6,285,674.61. Performing the netting calculations described in paragraph 11 above, I arrived at net proceeds of \$3,526,354.72 from Vermont's sale of 14,000,000 shares of Goff stock that were not purchased in the public markets.

16. In total, I calculated that Caledonian, Legacy Global, Clear Water and Vermont obtained proceeds of \$17,907,546.50 from their sales of 95,750,000 shares of Goff stock that were not purchased in the public markets.

**V. The Amounts of Proceeds from
Sales of Norstra Securities**

17. I calculated the amounts of proceeds obtained by Caledonian and Vermont from selling Norstra securities by examining, for the period from March 5, 2013 through June 24, 2013: (a) the number of shares purchased on the public markets; (b) the amount of money paid toward the purchase of such shares; (c) the number of shares sold; and (d) the amount of money received from the sale of such shares. By subtracting the number of shares purchased from the number of shares sold, and by subtracting the amount of purchase money paid from the amount of sale proceeds, I arrived at a net number of shares and a net amount of proceeds. For these calculations, I reviewed account statements from the brokerage accounts listed above that had transactions in Norstra securities. From my review of the account statements, I prepared the spreadsheet attached as Exhibit 3.

18. As detailed in Exhibit 3, Caledonian purchased 22,500 shares of Norstra stock for \$10,115.65 and sold 5,775,500 shares of Norstra stock for proceeds of \$4,543,329.19. Performing the netting calculations described in paragraph 17 above, I arrived at net proceeds of \$4,533,213.54 from Caledonian's sale of 5,753,000 shares of Norstra stock that were not purchased in the public markets.

19. As detailed in Exhibit 3, Vermont purchased 654,800 shares of Norstra stock for \$482,805.76 and sold 10,356,800 shares of Norstra stock for proceeds of

\$8,556,303.29. Performing the netting calculations described in paragraph 17 above, I arrived at net proceeds of \$8,073,497.53 from Verdmont's sale of 9,702,000 shares of Norstra stock that were not purchased in the public markets.

20. In total, I calculated that Caledonian and Verdmont obtained proceeds of \$12,606,711.07 from their sales of 15,455,000 shares of Norstra stock that were not purchased in the public markets.

**VI. The Amounts of Proceeds from
Sales of Xumanii Securities**

21. I calculated the amounts of proceeds obtained by Caledonian and Verdmont from selling Xumanii securities by examining, for the period from May 1, 2013 through August 8, 2013: (a) the number of shares purchased on the public markets; (b) the amount of money paid toward the purchase of such shares; (c) the number of shares sold; and (d) the amount of money received from the sale of such shares. By subtracting the number of shares purchased from the number of shares sold, and by subtracting the amount of purchase money paid from the amount of sale proceeds, I arrived at a net number of shares and a net amount of proceeds. For these calculations, I reviewed account statements from the brokerage accounts listed above that had transactions in Xumanii securities. From my review of the account statements, I prepared the spreadsheet attached as Exhibit 4.

22. As detailed in Exhibit 4, Caledonian purchased 60,175,869 shares of Xumanii stock for \$20,187,437.40 and sold 97,225,869 shares of Xumanii stock for proceeds of \$32,283,157.09. Performing the netting calculations described in paragraph 21 above, I arrived at net proceeds of \$12,095,719.69 from Caledonian's sale of 37,050,000 shares of Xumanii stock that were not purchased in the public markets.

23. As detailed in Exhibit 4, Verdmont purchased 23,992,776 shares of Xumanii stock for \$6,672,033.28 and sold 41,042,776 shares of Xumanii stock for proceeds of \$12,736,386.50. Performing the netting calculations described in paragraph 21 above, I arrived at net proceeds of \$6,064,353.22 from Verdmont's sale of 17,050,000 shares of Xumanii stock that were not purchased in the public markets.

24. In total, I calculated that Caledonian and Verdmont obtained proceeds of \$18,160,072.91 from their sales of 54,100,000 shares of Xumanii stock that were not purchased in the public markets.

I declare under penalty of perjury
that the foregoing is true and correct.
Executed on February 5, 2015.



Robert W. Nesbitt